

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY DONNEL L. DAVIS, a/k/a LARRY
DONNELL DAVIS,

Defendant-Appellant.

UNPUBLISHED
October 16, 1998

No. 201534
Berrien Circuit Court
LC No. 96-001564 FC

Before: White, P.J., and Hood and Gage, JJ.

PER CURIAM.

Defendant was found guilty by a jury of armed robbery, MCL 750.529; MSA 28.797, assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, first degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and three counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant's convictions arose from the shooting of Antonio Vincent at his house in Benton Harbor, Michigan during an armed robbery by defendant and two accomplices. Defendant was sentenced as a fourth habitual offender to terms of life imprisonment for the armed robbery, assault and home invasion convictions, and to three two-year sentences for the felony-firearm convictions, to be served consecutively to the three predicate felony sentences. He appeals as of right. We affirm defendant's convictions, but remand for an administrative correction of the judgment of sentence.

Defendant first contends that the trial court violated his constitutional right to confront a witness against him by forbidding defense counsel's cross-examination of robbery accomplice Denois Lanier regarding his detention and questioning by police after they discovered him in a crack house. According to defendant, the trial court's decision prevented the introduction of evidence that showed Lanier's self-interest in testifying and bias against defendant. We review the trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Howard*, 226 Mich App 528, 551; 575 NW2d 16 (1997).

Lanier's trial testimony implicated defendant in the armed robbery and shooting of Vincent. At the beginning of her direct examination of Lanier, the prosecutor established that he had originally been charged in connection with the armed robbery with the same five counts with which the prosecutor had charged defendant. Lanier then admitted that he had pleaded guilty to the armed robbery count and agreed to testify against defendant in exchange for the prosecution's dismissal of the five remaining counts against him. Lanier explained that when he was first interviewed at the Benton Harbor Police Department on March 6, 1996 with respect to the robbery, he minimized his involvement, failing to admit that he had shot Vincent or that he was inside the house during the robbery. Lanier eventually confessed to the police that he shot Vincent, but stated that the police did not promise him anything to get him to confess to the robbery's true details. He testified that the reason he finally admitted his involvement was that he knew he could not "beat it" at trial. He stated that there had been no plea agreement nor any promises or offers made to him at the time he first recounted to the police the full details of the robbery.

On cross-examination, defense counsel first asked Lanier how he got to the police station on March 6, 1996, attempting to elicit from Lanier the fact that the police had taken him into custody while he was present at a house that was the subject of a drug raid and from which a large amount of crack cocaine was seized. The prosecutor objected, the jury was excused and the parties argued whether defendant could further explore this topic. Defendant argued that one had to infer from Lanier's post-drug raid detention, his subsequent implication of defendant in the robbery and shooting of Vincent, and the fact that Lanier had never been charged with any drug-related crime, that the police had promised him leniency/dismissal of any drug charges if he would implicate defendant in the robbery. Defendant concluded that therefore this information went directly to Lanier's credibility.

The trial court rejected defendant's arguments. The court reasoned that, because no drug charges ever existed against Lanier and because no other evidence indicated any bias or motive to fabricate on his part, evidence of his presence during the drug raid and subsequent detention by police was irrelevant to the instant case.

The trial court properly excluded testimony regarding Lanier's presence during a drug raid and subsequent detention. Had Lanier's drug raid presence culminated in his arrest or indictment or any pending charges against him, and had some evidence tended to indicate that these charges were dismissed in exchange for Lanier's implication of defendant in the robbery, defendant could properly have pursued his proposed line of cross-examination. This Court has stated that evidence of arrests not resulting in convictions is generally inadmissible to impeach the credibility of a witness. *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990). However, an exception to that rule exists when the evidence is being offered to show the witness' interest in the matter, his bias or prejudice, or his motive to testify falsely because that witness has charges pending against him which arose out of the same incident for which the defendant is on trial. *Id.*

That exception does not apply to this case. First, no drug arrest, charge or conviction ever existed. Lanier was never even questioned about drug-related incidents. Second, defendant's argument that perhaps Lanier believed that drug charges would arise if he failed to provide the police with information regarding the robbery is speculative and unsupported by any evidence. Lanier offered

uncontradicted testimony at trial that his decision to confess to the truth about the robbery was spurred by his feeling that he would eventually be convicted at trial, and not by a promise of leniency regarding any drug charges. Therefore, we conclude that the trial court did not abuse its discretion by excluding reference to the drug raid and defendant's presence there.

Even if we accepted defendant's argument that the trial court erred in excluding this evidence, the error was harmless. Other testimony establishing Lanier's self-interest and motive to falsely incriminate defendant was introduced at trial. The record reflects extensive questioning of Lanier by both parties regarding the timing and extent of his plea bargain. Thus, the trial court's ruling could not have deprived defendant of a fair trial.

Defendant argues second that several instances of prosecutorial misconduct shifted the burden of proof and bolstered the credibility of the complainant, denying defendant a fair trial. We disagree. Our review of alleged instances of prosecutorial misconduct is foreclosed unless the prejudicial effect of the remark was so great that it could not have been cured by an appropriate instruction. *People v Turner*, 213 Mich App 558, 575; 540 NW2d 728 (1995).

When cross-examining defendant, the prosecution repeatedly questioned his inability to recall his whereabouts on the date of the robbery. The court allowed this questioning over defense objection. In her rebuttal argument, the prosecutor then argued that defendant's failure to remember was inconsistent with someone charged with a serious offense, and expressed disbelief that he could not recall a single person with whom he spent that evening. Defendant contends that this commentary and the prosecutor's implication that either defendant or the many witnesses against him must be lying impermissibly shifted the burden of proof to defendant to prove that he was not present at Vincent's house on the night of the shooting. Defendant also suggests that the prosecution vouched for and bolstered Vincent's credibility by introducing Vincent's prior, consistent identification of defendant through the testimony of another witness and by suggesting during rebuttal closing argument that Vincent would not have lied about who shot him. The trial court could have cured any alleged prejudice to defendant by instructing the jury to disregard the prosecutor's remarks. However, defendant failed to object at trial to any of these instances and therefore waived this issue for review. *Id.*

Finally, defendant argues that the judgment of sentence does not accurately reflect whether he received concurrent sentences for the felony-firearm convictions and whether the life sentences for the remaining felonies are to be served concurrently. Defendant correctly asserts that multiple felony-firearm convictions, though served consecutive to and preceding predicate felony sentences, must be served concurrently to each other. *People v Sawyer*, 410 Mich 531, 535; 302 NW2d 534 (1981). While the felony firearm judgments of sentence reflect that these terms are to be served consecutively to the terms imposed for the respective predicate felonies, the judgments do not clarify the manner in which these sentences relate to each other. Accordingly, we remand this case for amendment of the judgments of sentence to indicate that the felony firearm sentences should be served concurrently with each other.

Defendant's convictions are affirmed and this case is remanded for the correction of the judgments of sentence. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Hilda R. Gage